APPENDIX

Part One

[Tr. 4924, L. 5—Tr. 4924, L. 23]

[R. 30] By Mr. Bryant:

Q. Now, Mr. Schreiber, I show you, or you have before you another copy, a matter now marked—a two-page document now marked Exhibit LA 240 for identification.

Now, does this document, sir, contain all of the information called for in paragraph A of the Annex to the subpoena? A. I believe that it does, yes.

Q. Well, do you know that it does, sir? A. Well—

Q. Or have you been advised? A. I have been advised that it does.

Q. I see. Thank you.

Mr. Bryant: May it please your Honor, I now offer as an exhibit in evidence a two-page document produced by Mr. Schreiber, pursuant to paragraph A of the Annex to the subpoena just read in the record, as an exhibit in evidence in this record.

Chief Hearing Examiner: It will be received in evidence.

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[Tr. 4925, L. 10—Tr. 4935, L. 24]

[R. 30] Q. Now, Mr. Schreiber, will you direct your attention to paragraph B on the Annex attached to the subpoena now Exhibit LA 239 in evidence, and tell me whether you have produced here this morning the information called for in that paragraph marked B? A. We have that information. However, we only will offer—

Q. Just a moment.

You do have the information with you, is that correct, sir? A. Yes.

Q. Well, will you now produce the information, sir? A. We will be happy to produce it on the basis of its being kept confidential.

Q. I ask you again, sir, will you produce the information for us here now as called for by the subpoena? A. I re-

spectfully submit that we cannot produce confidential information for this record.

Q. Well, now, is it your contention, sir, that the informa- [R. 31] tion called for in subparagraph B of the Annex is confidential, is that it? A. Yes, sir.

Q. Well, will you tell us, Mr. Schreiber—are you familiar with the testimony given here yesterday by the representatives of the William Morris Agency? A. Just by hearsay.

Q. I see. Well, generally, will you tell us why, if you wish to do so—why this information called for in subparagraph B is, in your judgment, confidential information? A. Well, this relates to personal relationships, agency relationships with the client. It is confidential in that these are matters really belonging to principals other than ourselves.

And we think that we, in effect, would be not only violating that fiduciary, but at the same time making available information that might be used detrimentally; it would be possibly advantageous to our competitors and people who might welcome that information.

And it has never been generally given.

It has been the policy of our company not to give this information. And it has been a policy for many years.

Q. Does that adequately state your position, sir? A. Yes.

Q. Now, may I call your attention, sir, to be sure that we are discussing the same thing here—this subpoena calls simply for a list of the programs.

You are aware of that, sir? A. Yes, sir.

Q. And, basically, those programs, translating this out of legalese into words that perhaps we can all understand—this, generally speaking—did you take in reading this, or were you advised, that this meant generally the programs in which you act as packager or selling agent; is that correct? A. Yes.

Q. I see.

And it is your position that you should not be required publicly to disclose even the names of these programs? A. Yes, sir.

Q. This category? A. Yes, sir.

[R. 32] Q. Is there anything further you wish to say in this regard? A. We would like to help the Commission in this regard, and feel that giving the Commission this information in confidence should serve its purpose.

We don't think, however, that it should be made a part of a public record that would therefore be available to people who otherwise could not have this information.

Q. Then, if I understand it, your position is that you are ready to supply the Commission in this proceeding with this information, but you do not wish to do so in a public context, is that correct? A. That might be interpreted various ways. I would rather state it in my own language, and that is that if the Commission will take this information and assure us that it will be held in confidence, will not be published, and will not be made available to other people, other than those on the Commission, and that serve the Commission, we are very happy to give this to the Commission.

Q. Well, perhaps we had better define this a little further.

In other words, you would be limiting this simply to the Commission and its employees, is that the case? You said the Commission or those who serve the Commission.

Would you care to consult with your counsel? A. Yes.

Mr. Bryant: May the witness consult with his counsel?

Chief Hearing Examiner: Yes.

By Mr. Bryant:

Q. You have consulted your counsel. Would you care to have the question reread, or do you have it in mind? A. I have it in mind.

Q. Yes, sir. Then would you give me your answer, please? A. On advice of counsel, I would prefer—we do not want to offer this to the Commission unless, as I say, it is kept confidential—primarily because we believe that this information and these facts that you request are really outside of the operation of this hearing.

Q. Well, I understood you to say that, sir. What was the [R. 33] last—that the facts are outside of the operation of the hearing—were those your words? A. Yes, sir.

Q. Now, I still am not clear, sir, and I think the record should be clear on this, because this problem has been raised, as you may know, in other contexts, in other proceedings.

When you say "confidential," what is it that you are asking that we agree to do with regard to holding the matter confidential? A. May I consult?

Mr. Susman [counsel for Mr. Schreiber and MCA Inc.]: Just a moment, Mr. Schreiber. I would like to be heard on this.

Chief Hearing Examiner: I am sorry, sir. The ground rules, as you may or may not be aware of—

Mr. Susman: I am aware of what has transpired with counsel in this proceeding, your Honor, but I don't quite agree with the concept of what the ground rules are. But, be that as it may, I think we are getting into an area now where Mr. Schreiber, who is not a lawyer, is not really in a position to be answering questions of this nature.

Chief Hearing Examiner: I am sorry. I believe I cannot hear you at all. Will you strike counsel's—

Mr. Bryant: Would it help if I—

Chief Hearing Examiner: Strike counsel's statement from the record.

[R. 87] He is at liberty, if he wishes, to consult with his client on the stand at any time, and, likewise, he is at liberty to consult with counsel for the network study office.

But I cannot hear argument of counsel—only statements of the witness, who will reflect the views of counsel whenever he desires to do so.

Mr. Bryant: Well, sir—

Mr. Susman: Just a moment sir. I would like to make a record on this, if your Honor please—

Chief Hearing Examiner: There will be no record made. You are out of order, sir. I have ruled. I will not hear

you in this proceeding. We are off the record while you talk.

You may consult with the witness. That is the ruling, right or wrong.

You may have your exception to that, through the witness.

I will not hear you.

Mr. Bryant: May we, sir, have a short recess here to [R. 88] afford Mr. Schreiber an opportunity to consult with Mr. Susman?

Chief Hearing Examiner: Very well. Take ten minutes.

Mr. Bryant: May I say just at the moment, for the record, before we leave, that I, anticipating that a situation of this kind might arise, had a discussion with Mr. Susman before we came in here this morning, and fully acquainted him with the procedures which your Honor had laid down in this proceeding.

Chief Hearing Examiner: Very well, sir.

Mr. Bryant: Ten minutes, sir?

Chief Hearing Examiner: Ten minutes.

(At this point a short recess was taken, after which the hearing was continued.)

Chief Hearing Examiner: Are you ready to proceed, gentlemen?

Mr. Bryant: Yes, sir.

I think there is an open question on the record—if the reporter would read it.

(The question was read.)

Mr. Susman: Mr. Hearing Examiner, will all deference, your Honor—

Chief Hearing Examiner: I cannot hear you, sir. I will not.

Strike the statement.

Mr. Susman: I think I have a right, sir, to make a record in this matter.

Chief Hearing Examiner: You have a right to make a record through your client. This is not an adjudicatory proceeding. It is investigatory.

I will not hear argument or objections from counsel. The witness is at liberty to refuse for any reason you advise to answer any questions propounded here.

I shall not hear you.

I have not heard any other counsel in this matter.

Mr. Susman: Sir, no lawyer can operate effectively—

Chief Hearing Examiner: Strike the statement from the record.

[R. 89] I warn you, sir, I will have you ejected from these proceedings, if you persist in this contempt.

Let's proceed.

[R. 33] The Witness: May I make a statement?

Chief Hearing Examiner: Let the witness make a statement.

The Witness: I came to this hearing with the expectations that I would testify on those subjects that were properly a matter of Commission interest and within the Commission's scope, authority and responsibility.

Mr. Bryant: Could you keep your voice up a little bit, Mr. Schreiber?

The Witness: And which, of course, would not require the public disclosure of trade secrets and confidential data of my company which might be of aid to its many competitors in this highly competitive television industry. [R. 34] I am a businessman and one, incidentally, who has every faith and confidence in the American principle of free enterprise. I am not a lawyer. I am not a lawyer. I do not profess to be an expert about legal matters. The course that the interrogation has taken during the past two weeks has made it abundantly clear to me and I presume to all disinterested observers that one of the primary purposes of these hearings has been to question and perhaps criticize the business practices of the television production business. [R. 89] Apart from the fact that such a purpose

is plainly wrong and unjustified, and outside of the Commission's authority, in the posture and context the hearings have taken, I feel that I should have the effective and knowledgeable assistance of counsel.

The so-called ground rules laid down by the Hearing Examiner in these hearings, beginning on October 10th and repeated from time to time as the hearings progressed, does not grant me or my company that right. On virtually every occasion when an attorney for one of the witnesses has attempted to make a statement or an objection, he has been summarily directed by the Hearing Examiner to be quiet and that he had no standing to say anything.

[R. 34] Lawyers and witnesses have been told in these hearings that before an attorney may so much as talk to his client, the client must ask the Hearing Examiner's permission to speak with his lawyer. Now, no lawyer can function effectively as a lawyer under these circumstances. I vigorously and completely disagree with the ground rules of this kind. In my judgment, such ground rules deprive me and my company of the right to be accompanied, represented and advised by counsel. And I therefore respectfully decline to proceed further as a witness under the duress of such rules.

Mr. Bryant: Does that complete your statement, sir?

The Witness: Yes, sir.

Chief Hearing Examiner: Just a minute. I direct you to return to the stand.

The Witness: I decline to return unless these ground rules are changed so that I can be effectively represented by my attorney.

Chief Hearing Examiner: The ground rules will continue. There is no doubt in my mind as to their validity. The Commisison concurs in that view.

Now, I direct the witness to return to the witness stand and answer whatever questions counsel may have relative to this proceeding.

The Witness: I decline.

Chief Hearing Examiner: Very well, sir. The record will show your position.

(The witness left the stand.)

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Part Two

[Tr. 8137-8139]

The Witness [James T. Aubrey, Jr., President of CBS Television Network Division]: They range from $500 for an outline of a program idea to a half-million dollars for a license of the television rights to an established literary work. They range from $300,000 for a single special program to a multi-million dollar series commitment.

In any given program project, the network may be an owner, a joint venturer, an employer, a distributor, a licensee, or some variation or combination thereof. Program projects may involve exclusive employment contracts, income deferment arrangements, profit participations, guarantees against earnings, corporate joint ventures, or corporate acquisitions.

The Commission has requested specific information concerning network rights in film programs licensed to CBS, its financial interests in these programs, profit participations, distribution arrangements, and other details. We have submitted this information in four charts, two of which identify these relationships. Copies are attached as Exhibits No. 4 and 4-A. The other two charts, submitted on confidential basis, measures those relationships.

(DOCUMENTS REFERRED TO WERE MARKED EXHIBITS 4 AND 4-A (CBS) FOR IDENTIFICATION.)

Mr. Bryant: May I interrupt there just a minute when you say confidential. That refers to some information which you have supplied us at our request, requested in the Chairman's letter which, if I am correct, involves matter which you consider to be of a competitive nature,

the disclosure of which would be damaging to you competitively, is that correct?

The Witness: That is correct, Mr. Bryant.

Mr. Bryant: And this matter was discussed between counsel for the Commission and counsel for your organization and the Commission notified you in the letter—I have forgotten the date—the letter setting out the procedures —that it had been decided that it would not be necessary for—to achieve the purposes of this inquiry, to require you to disclose that matter over your statement of injury to you competitively. Is that correct?

The Witness: I believe that is correct.

Mr. Bryant: Thank you, sir.

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[Tr. 8495-8498]

Mr. Bryant: You have MCA Artists, Limited. Would you clarify what you are doing there?

Mr. Harrison [W. Spencer Harrison, Vice President and General Business Manager, Talent and Contract Properties, CBS Television Network Division]: I would be happy to.

During the term of Mr. Sullivan's first contract with our company, he was represented by MCA individually, not in a package relationship. In 1956, I believe it was, we entered into a renogiation with Mr. Sullivan for his continued program with us. In that negotiation, he was represented by MCA. That negotiation resulted in a rather competitive relationship between ourselves and another network. One of the elements in that competition, or resulting from that competition, was an MCA Commission for the show for the above-the-line elements of the package.

Mr. Bryant: And what year was this?

Mr. Harrison: 1956, I believe.

Mr. Bryant: And the proposition, I gather, was that unless MCA packaged the show, you didn't get Sullivan. Is that what you mean when you say you were in a competitive situation with another network?

Mr. Harrison: The deal was presented to us as a deal that we had to meet.

Mr. Bryant: I see.

Commissioner Ford: Well, does that mean that Sullivan didn't get any more money, but MCA got ten per cent?

Mr. Harrison: I am sorry, Mr. Commissioner. Mr. Sullivan got a great deal more money.

Mr. Bryant: And MCA got ten per cent of that, ten per cent of the insurance—you say above the line. What is above the line?

Mr. Harrison: Above the line is only the creative elements. This being a live show, MCA did not commission the below-the-line elements of the program, which are furnished—our studio facility, our cameramen, etc.

The Chairman: I wouldn't ask you who created it?

Mr. Bryant: Well, now, what other situations have there been, sir, where you have been presented with a cold turkey proposition like this?

Mr. Harrison: Well, as I tried to explain to you, in the past four or five years, I would guess it is, most of the projects that now are presented with major name stars as such come into us via an agent representation at the very beginning. And those deals are based upon a price for the program. And while I am knowledgeable of the fact that the program is bearing a commission to the agent, and a ten per cent on the package, it doesn't make any difference from our point of view in purchasing it whether it bears that or not. We are met with a $50,000 for an original film price, or $55,000, or whatever it is. And it is not my job to look behind the $51,000 or the $55,000. The marketplace has shifted for that property.

The Witness: Mr. Bryant, in connection with this I would like to point out in the normal couse of casting shows, unless we are involved in a very, very major talent in the business, this presents no problem whatsoever. When we deal with the major talents, this possibility has already

been recognized by their agent, and they are presented to us on this basis as a package. But with individuals of lesser stature, we frequently are able to cast shows as we desire with the agent merely representing them and not the package.

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[Tr. 8771-8779]

Mr. Bryant: I see. Now, I call your attention to an article from Fortune Magazine of July 1960, entitled, "There is no show business like MCA Business," pages 114 to 120, 152 to 156. Are you familiar with that article?

The Witness [Robert W. Sarnoff, Chairman of the Board, National Broadcasting Company]: I am not sure, but I think I am.

Mr. Bryant: Well, may I show it to you, if you would like to see it. Or do you have it?

The Witness: No, I would like to see it.

Yes sir.

Mr. Bryant: Now, page 116, there is an underlined portion of that article that I have just handed you, is there not, sir?

The Witness: Yes.

Mr. Bryant: And does it read like this: "One spring night in 1957, Kintner and Chairman Robert Sarnoff called a meeting of the network program executives. After they had assembled, the door opened and in walked MCA Vice President David A. (Sonny) Werblin. Without any preliminaries, Kintner said to him, 'Sonny, look at the schedule for next season, here are the empty spots, you fill them.' The rest of the evening the NBC executives"—what I have apparently is a misprint. What is the next word you have in the article there?

The Witness: "meekly watched"?

Mr. Bryant: "meekly watched Werblin rearrange their schedule and insert new shows. When finished, the schedule showed 14 series eight and a half hours a week in prime

time, that MCA itself had produced or sold. And that is the way it remained."

Now, sir, have you ever read that article before?

The Witness: Yes.

Mr. Bryant: Is that a reasonably accurate account of a meeting among you, Mr. Kintner, and Mr. Werblin?

The Witness: It is totally false.

Mr. Bryant: I see. It appeared in Fortune Magazine, sir.

The Witness: That is what this tear sheet is from, yes.

Mr. Bryant: You say it is totally false.

The Witness: That is correct.

Mr. Bryant: That no such thing ever occurred?

The Witness: That is right.

Mr. Bryant: Now, in connection with the 1957-58 schedule, the '58-'59 schedule, and the '59-'60 schedule, and your present schedule—there is a rather high—and I have the figures here if you would like to see them—there is a rather high preponderance, is there not, of shows which are either produced or packaged—or sold by MCA?

The Witness: I don't have the exact figure. Stabile—

Mr. Bryant: May I show it to you?

The Witness: I would like to ask you, Mr. Bryant—I don't see the relationship between that and this article—at least this specific quote.

Mr. Bryant: Well, I don't think it would be proper for me to draw the inference. I think we will let the record speak for itself.

The Witness: There can't be an inference, if the article is false. Mr. Bryant, if I may—.

Mr. Bryant: Now, sir, I think you have there on that—and I don't have another copy of the article—but you have there a schedule which purports to show that—excuse me. NBC—this is on page 117 of the article, and this purports to be the network schedule which is referred to in this article. And—

The Witness: Let me make sure that you are right. This does not indicate what year the schedule is.

Mr. Bryant: Well, let me ask you a simple question.

Here it says that eight and a half—of fourteen series, eight and a half hours a week in prime time, MCA either had produced or sold. Now, can you tell me, sir, as the chief executive of the National Broadcasting Company, whether in the season referred to here there were fourteen programs constituting eight and a half hours a week in prime time in your schedule that MCA either had produced or sold.

The Witness: I don't have the answer to that, Mr. Bryant. But I believe that Mr. Stabile will have it.

Mr. Bryant: Well, can you supply that for us, sir?

The Witness: Yes, sir, we can.

Mr. Bryant: We have your figures for October 1960, December 1959, and I believe that Mr. Stabile is going to introduce the figures for November 1961, is that correct?

The Witness: That is correct.

Mr. Bryant: But in any event, you deny flatly that this is a correct account, or this ever happened?

The Witness: I certainly do. And I would like, if I might, to read you something in that connection, just to keep the record straight.

Mr. Bryant: Why, certainly. My question was going to be did you ever protest to the editors of Fortune, and did you inform them that this was, as you say, a falsehood—is that correct?

The Witness: That is what I said.

Mr. Bryant: Yes.

The Witness: I would like to read for the record a letter of November 21, 1961, for Mr. Kintner, to Mr. Max Ascoli, the editor and publisher of "The Reporter."

Mr. Bryant: Pardon?

The Witness: I would like to read a letter from Mr. Robert E. Kintner, the President of NBC—

Mr. Bryant: I thought it was to "The Reporter."

The Witness: Editor and publisher of "The Reporter." It will refer to this article.

Commissioner Ford: Is that a little "r" for "reporter" or a big "r"?

The Witness: A big "r"—"Reporter" magazine.

The Chairman: You go ahead and read it, Mr. Sarnoff.

The Witness: This is dated November 21, 1961.

"Dear Sir: I have read Nat Hentoff's article "The Octopus of Show Biz," published in the November 23 issue of The Reporter which includes a reference to me that is flatly erroneous in all respects. This reference states that "no one has yet denied" a report in Fortune Magazine regarding a meeting at NBC in which Mr. David A. Werblin, Vice President of MCA, was asked to fill in the open spots in our television network program schedule.

"No such meeting was ever held. Mr. Werblin was never asked to fill in our schedule. NBC itself selects the programs for its schedule on the basis of its evaluation of each program, and has never turned over to others the responsibility for selection and approval of programming to be broadcast on its facilities. The statement that "no one has yet denied" the Fortune Magazine story is also untrue, when it was brought to my attention. I denied it by letter to the Managing Editor of that publication.

"In order to prevent further circulation of this unfounded rumor, I am requesting that this letter be published in The Reporter."

I would also like to submit for the record a letter from Mr. Kintner of January 26, 1962, to Mr. Robert M. Wool, editor-in-chief of a magazine called "Show."

"Dear Sir: The article about MCA by Bill Davidson in the February 1962 issue of Show magazine includes a reference to me that is completely erroneous in all respects. This reference concerns "a persistent story, reported by 'Fortune' and related by eyewitnesses" to the effect that

Mr. David A. Werblin, Vice President of MCA, was asked at a meeting in 1957 to fill in the open spots in our television network program schedule.

"No such meeting was ever held. Mr. Werblin was never asked to fill in our schedule. NBC itself selects the programs for its schedule on the basis of its evaluation of each program, and has never turned over to others the responsibility for selection and approval of programming to be broadcast on its facilities.

"When the Fortune magazine article was brought to my attention, I denied it by letter to the Managing Editor of that publication. When this false report was subsequently repeated in an article in The Reporter, I sent that publication a denial which was printed in the December 21, 1961 issue of The Reporter.

"In order to prevent further circulation of this unfounded rumor, I am requested that this letter be published in Show."

Mr. Bryant: So that if there is a high—what might be—has been referred to as a high preponderance of MCA shows in your evening schedule for the past four years, this is simply a coincidence, based on your judgment that these are the best shows for the particular spots where they are placed in the schedule, is that correct?

The Witness: Referred to by whom?

Mr. Bryant: Pardon?

The Witness: Referred to by whom, Mr. Bryant?

Mr. Bryant: Will you read me back my question.

(The reporter read from his notes as requested.)

Mr. Bryant: You say where has it been referred to as a high preponderant?

The Witness: Yes.

Mr. Bryant: I do not know where it was used—those exact words, In the articles you have just referred to,

in "Show," in "Reporter," and in "Fortune," this is certainly the clear implication of what they said.

The Witness: I haven't read those articles, so I can't vouch for it.

Mr. Bryant: I have.

Now, may I ask you this. This is the question.

The fact that—we will be very specific, then, sir.

The fact that in your evening—and this is material which was furnished to us and was put in the record in this proceeding in Hollywood. The fact that for your regular schedule, October 1960, 6 to 11 p.m., you have ten shows in the schedule that were either produced by Revue productions or sold to you by MCA, that in the schedule for December, 1959, you have ten, and four—at present, in your evening schedule—and these are all six to eleven—this is November 1960—you have nine shows, all of which were either produced by [Revue] or sold to you by [Revue] —that that is simply a coincidence, is that correct?

The Witness: I don't follow what you mean by coincidence.

Mr. Bryant: Well—

The Witness: Coincidence in what respect? We have programs in our schedule—

Mr. Bryant: I believe you stated that—strike that. That you select yourself programs which go into your schedule, on the basis of your judgments as to what are the best programs, both in terms of your scheduling—is that correct?

The Witness: That is right.

Mr. Bryant: My question simply is, then, the fact that this number of programs that I have read, referred to in the Fortune article and the other articles, is simply a coincidence, is that right?

The Witness: Well, if you are asking me, Mr. Bryant, whether we have ten programs in the schedule that are either produced by Revue or are represented by Revue, and produced by others, if those are the figures, and we verify them, I will accept that. I see that it has no signifi-

cance whatsoever in terms of coincidence or anything else. They are there because we thought they were good programs and they ought to be in the schedule.

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[Tr. 8961-8963]

Mr. Bryant: Well, could you give us some sort of an estimate for the record as to what you devote to program planning?

The Witness [Hugh M. Beville, Jr., Vice President for Planning and Research, National Broadcasting Company]: Are you talking about program planning as distinct from program placement, program—

Mr. Bryant: That is correct.

The Witness: All the various other aspects we are referring to.

Mr. Bryant: Yes.

The Witness: I would say the program planning area, perhaps 15 per cent might be a reasonable figure. It will vary, of course, from time to time depending upon the particular projects or problems we may be working on.

Mr. Bryant: Now, do these projects result in studies, do they, sir?

The Witness: They result in studies. But more important, after our analysis and interpretation of the reports from the research companies, they result in findings and recommendations—conclusions and recommendations which we make on the basis of the studies.

Mr. Bryant: Well, could you provide us for the record, sir, with some of these studies that you have made, so that we could have them in the record? Or are they considered competitive data?

The Chairman: Well, some of them of course would be privileged. I am sure those that were done most recently we probably would be unwilling to put in the record. There might be some older ones that we could make available.

Mr. Bryant: Well, I can consult with your counsel about that.

The Witness: Yes.

Mr. Bryant: Thank you.

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[Tr. 9068-9077]

Mr. Bryant: Now, we had some testimony from CBS about this. Has it become a practice in the business, as you have observed it and participated in it, that if you want the services of a star, a desirable player, or perhaps a desirable director or perhaps a desirable writer, that it is represented by MCA, in the usual case wouldn't you have to permit them to represent the package and get a ten per cent fee over-all on that package?

Mr. Stabile [James A. Stabile, Vice President and Associate General Counsel, National Broadcasting Company]: Mr. Bryant, I cannot say in the usual case. It depends upon the nature of the show. We have had a number of shows that we have produced ourselves, individual shows and series, where we have engaged the services of producers and stars and have obtained them from talent agencies without the requirement of packages. On the other hand, if we are desirous of obtaining the services of an outstanding star for a series, the practice of the business, based upon his advice, the stars advice from his financial advisor, from his tax advisor, from his business advisor, is to offer himself as an entity, so that he can own some tangible assets, and in that instance it is a package.

Mr. Bryant: He offers himself as an entity. Now, what do you mean by that?

Mr. Stabile: He—

Mr. Bryant: Where does that fit into the schedule here that we are referring to? What entity does he become?

Mr. Stabile: He becomes a producing organization, or the owner of the producing organization.

Mr. Bryant: Now, does that become a component of the package, is that what you are saying?

Mr. Stabile: It becomes the package.

Mr. Bryant: I see. So that instead of representing

the individual, the talent agent represents this package that he has put together, is that right?

Mr. Stabile: That is often the case, yes.

Mr. Bryant: Well, normally the actor doesn't put it together, does he? Isn't it put together by the talent agent?

Mr. Stabile: It is put together, Mr. Bryant, from my experience, by the talent agent together with the very direct advice of the business [advisor] or of the star, who has determined that this is the way the star is to conduct his business.

Mr. Bryant: Well, we don't want to get too far into their tax affairs. I think the point is here, if you want to get the services of "X" in a film series, and he is represented by MCA, or William Morris, you will deal with MCA and William Morris, and they will be paid ten per cent of the over-all package, is that correct?

Mr. Stabile: If they deliver a package, that is true, yes.

Mr. Bryant: I see. Well, how do you determine—we had this with Mr. Colman on the cost. Is there some rule or custom in the business as to what constitutes a package?

Mr. Stabile: Well, Mr. Bryant, I think a package can most simply be defined as a grouping or combination of two or more elements that form part or all of a program.

Mr. Bryant: I see. Well, can a package—strike that. Can one qualify occasionally in representing a package merely by delivering the star? Have there been cases like that?

Mr. Stabile: Not to my knowledge, Mr. Bryant.

Mr. Bryant: Well, what is the minimum, then. You say two or more elements. What would two elements be?

Mr. Stabile: Two elements could be the script writer and the producer. Normally, it is a little bit more than two. But there have been instances where there have been just two.

Mr. Bryant: Well, now, other than guide—isn't the talent agent, while being a talent agent, under an obligation, Mr.

Stabile, in dealing personally with his client, from your knowledge of the business, to advise and assist the client for the ten per cent of his wages that he normally gets?

Mr. Stabile: Yes, that is true.

Mr. Bryant: Now, what does the talent agent do in a situation like this, in addition to what he is bound to do in his fiduciary relation to his client as talent agent to him personally. You are a lawyer, are you not, Mr. Stabile?

Mr. Stabile: Yes, I am. In my judgment, in addition to his fiduciary relationship in guding the future of the star, when a talent agent represents a package, he gets into the discussions involved with script acquisition, future of the show, selecting production facilities, advicing the package or the star as to the very many business risks that are involved.

Mr. Bryant: Well, now, I notice in a case or two here, sir—for instance, in Laramie—

Mr. Stabile: Yes.

Mr. Bryant: You have the packager's Review studio, and the agency representative's MCA.

Mr. Stabile: That is correct.

Mr. Bryant: Now, aren't they the same people?

Mr. Stabile: One is a subsidiary of the other, to my knowledge. I am not completely familiar with—

Mr. Bryant: Well, may I suggest that Review is a division of MCA, Inc?

Mr. Stabile: It may be. I am not completely familiar with it, Mr. Bryant.

Mr. Bryant: In other words, Review is Taft Schreiber, who is in charge of Review productions, as a vice present of MCA, Inc., isn't he?

Mr. Stabile: He may be. I am not familiar with—

Mr. Bryant: Well, tell me. You dealt, as a I understand it, with MCA, or did you, sir—in bringing Laramie to the network. Did you deal with Review and MCA.

Mr. Stabile: Your negotiations were primarily with MCA.

Mr. Bryant: I see. You are familiar with the negotiations though.

Mr. Stabile: Yes.

Mr. Bryant: Well, what was your understanding as to what MCA did on behalf of what appears to be either for which it presumably got ten per cent—or did they, in that deal?

Mr. Stabile: MCA, in representing Review Studios, assisted and counselled, to the best of my knowledge, in putting the show together, in obtaining the participants in the show, and assisted the network in sales of the show to sponsors.

Mr. Bryant: Well, let me see if I understand this.

You have a corporation called MCA, Inc.

Mr. Stabile: That is right.

Mr. Bryant: And I believe this record shows that Review Productions is a division of MCA, Inc.

Now, is Review paid a ten per cent—I mean is MCA paid a ten per cent fee for representing Review in instances of this kind?

Mr. Stabile: I am not aware of what Review pays MCA, Mr. Bryant.

Mr. Bryant: I see.

Mr. Stabile: I am not trying to doge the question. All I know is our negotiations were with MCA on behalf of the show.

Mr. Bryant: Well, now, whom do you pay?

Mr. Stabile: We pay MCA as agency for Review Studios.

Mr. Bryant: I see. In other words, you don't know, of your own knowledge, whether or not there is a ten per cent markup here from Review to MCA to you.

Mr. Stabile: Of my own knowledge, no, I do not, Mr. Bryant.

Mr. Bryant: And would that also be true of the Wagon Train, which is also produced—packaged, according to this exhibit, by Review Studios, and represented by MCA / You

don't know there whether there is a ten per cent commission involved?

Mr. Stabile: I don't know whether there is an actual payment from Review to MCA, no.

Mr. Bryant: Is there anyone else of you three gentlemen who does?

Mr. Scott: I do not.

Mr. Bryant: Well, now, you have been with NBC since before 1957, have you not, sir?

Mr. Stabile: February of '57.

Mr. Bryant: February of '57. Now, you were here, of course, when I examined Mr. Sarnoff about this general subject.

Mr. Stabile: Yes, I was, Mr. Bryant.

Mr. Bryant: And you heard his testimony that there was apparently no relation between the fact that you had a large number of shows represented by MCA in your schedule, and that this came about simply as a result of these shows being selected according to the process that has been described here, is that correct?

Mr. Stabile: Yes.

Mr. Bryant: In other words, you agree with Mr. Sarnoff's testimony?

Mr. Stabile: Yes. And I can only add, Mr. Bryant, that Review happens to be perhaps the most prolific producer of programs.

Mr. Bryant: May we have a moment here, sir?

The Chairman: Commissioner Bartley.

Commissioner Bartley: Mr. Stabile, you mentioned the MCA participation in the sales effort. Would you explain that a little more fully?

Mr. Stabile: I am sorry, Commissioner Bartley—participation in the sale to sponsors?

Commissioner Bartley: You mentioned the MCA participation in the sales effort of the Laramie show. Can you tell me how they participate, and how they—are they compensated for that additionally?

Mr. Stabile: If you are referring to the participation that I referred to in selling the show to advertisers, they are not compensated by us for that.

Commissioner Bartley: Well, now, can you tell me the extent to which they participated—how they—did they bring the advertiser to you?

Mr. Scott: May I, Commissioner Bartley?

Sometimes they do. A case in point in my testimony, when I referred to International Showtime, a program on Friday night in the current season, in that particular case, International Showtime was produced by an independent packager represented by MCA. The talent agent and the packager jointly went out and found the first advertiser, or interested and sold the first advertiser and came into us with underwriting for one third of the program in the beginning. That made the program more interesting to us. They then worked with our Sales Department in getting additional advertisers into the show.

Mr. Stabile: Mr. Bryant, may I make one clarification. This has to do with the agency commission. I answered that I do not know of my own knowledge what the payment relationship is between Review and MCA. And I do not. We are aware that there is included in the budget of the show a ten per cent fee which is considered a cost of the show budget. Whether in fact that ten per cent is paid, I am not aware of it.

Mr. Bryant: In other words, there is a ten per cent allowance in the budget for the normal agency fee, is that right?

Mr. Stabile: There is an allowance—at least we recognize that such an allowance may be there. Now, whether in fact it is paid, I don't know.

Mr. Bryant: Thank you.

Now, let me ask you just one further question here on this.

Bonanza you produce yourself, do you not?

Mr. Stabile: Yes, we do.

Mr. Bryant: Now, is this directly an NBC production, or is there another corporate entity involved?

Mr. Stabile: It is produced through another corporate entity. NBC does not have agreements with the unions that represent film production.

Mr. Bryant: Now, with regard to Bonanza, is there any agency representation there?

Mr. Stabile: On the show, you mean?

Mr. Bryant: Yes.

Mr. Stabile: No. NBC produces that show directly. It employs the producer, the writers and the cast.

Mr. Bryant: I see. Thank you.

The Chairman: Can we go back one minute. You mentioned that there was a ten per cent allowance in the budget on the show in the contracts you have with MCA.

Mr. Stabile: Yes.

The Chairman: Can you just give us an idea for the record what that ten per cent amounts to in the course of a year. You have got a number of shows with them. I wouldn't hold you to any specific amount.

Mr. Stabile: Well, I think we can give it to you in more specifics. But for example, Mr. Chairman, on a show that is licensed to us at a cost of $100,000, that ten per cent would represent $10,000.

The Chairman: Right. And what do you think that ten per cent amounts to in a course of a year, with the number of shows you have on the air now?

Mr. Stabile: I would prefer to supply that in more specifics, because I would not want to give you a rough estimate.

The Chairman: All right. But I will supply that for the record.

Mr. Stabile: We can give you our best estimate, Mr. Chairman.

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[Tr. 9081-9082]

Commissioner Ford: Do you have, for the years probably 1956, 1957, 1958, 1959 and 1960, the number of programs packaged in which MCA is the representative? In other words, what I would like to see is for the year 1956 a list of the nighttime line-up with those in which MCA is the packager or the agent, similar to Mr. Stabile's Exhibit No. 2-A. This is for 1961, for example. I would like to see this same information in that exhibit for 1956, 1957, 1958, 1959 and 1960. I don't expect you to have that in your pocket.

Mr. Stabile [James A. Stabile, Vice President and Associate General Counsel, National Broadcasting Company]: Commissioner Ford, we have, I believe, already furnished to the staff information for 1957 through 1960, sources of program.

Mr. Bryant: 1959, 1960, and 1961. I have not—we do not have the information prior to that.

Mr. Stabile: We can supply it, Commissioner Ford.

Commissioner Ford: Well, if you have not—that part of it which you have not already supplied.

Mr. Stabile: Yes, sir, we can supply that.

Commissioner Ford: I expect to ask both CBS and ABC to furnish this same information for the same years.

Mr. Stabile: Yes, sir.

Commissioner Ford: Because here, in this one, out of 21 nighttime shows, MCA has nine of them. And I am curious as to at what point in time MCA jumped maybe from one show up to nearly 50 percent of your nighttime line-up.

Mr. Stabile: We can give you the tabulation, Commissioner.

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[Tr. 9149-9151]

Mr. Bryant: I see.

Well, now two or three times we have had the question come up, Mr. Stabile, as to just what the situations with regard to MCA.

I gather that you did not know that MCA—Review Productions is a division of MCA?

Mr. Stabile: I am not aware of their corporate structure.

Mr. Bryant: Well, let me read you from this record, Exhibit LA237, which is in the transcript at 4916. And it says here, "Prior to the incorporation of the company in Delaware on November 10, 1958, there were five main MCA companies related through common ownership." Etc. And then a table down below. It says, Company before reorganization, after reorganization," and I am reading from the registration statements at the SEC.

"Review Productions, before reorganization, independent parent, after reorganization, merged." And it is now described as a division of MCA.

Mr. Stabile: Yes sir.

Mr. Bryant: Now, along these lines, the process you described yesterday of dealing with an agent, a talent agent, who represents, rather than an individual piece of talent, if that is the term in the industry—he represents a package, is this on the increase over the last five or six years?

Mr. Stabile: I don't believe that I can say that there has been any discernible pattern in that area, Mr. Bryant.

Mr. Bryant: Well, actually—let me read you from page 5 of Variety" for JUne 14, 1961. Now, MCA, to your knowledge, they started out, did they not, principally as a talent agent?

Mr. Stabile: To my knowledge, yes.

Mr. Bryant: I see. And they gradually came into the television business, is that correct?

Mr. Stabile: Yes sir.

Mr. Bryant: Now, let me call your attention to some figures here. It says here—and this is on page 12 of the issue of Variety I just referred to—"MCA Chairman Steil also utilized the Annual Meeting, the second since the company went public in '59, to express his pride in earlier released annual report figures that MCA's total income for 1960 at $67,317,103, just over $10 million more than 1959, and more than double the 1956 figure of $32,144,843."

And then it goes on to say, and apparently quoting the annual report—"Of the total gross income, MCA earned $57,593,078 from television film and studio rentals, at their Revue Studios in Universal City, up $9,456,700 from 1959." And then skipping over, it says, "The only dark spot in the report is a $81,500 decline in agency billings from $8,792,414 in 1959 to $8,710,914 in 1960."

So that there seems to be no doubt, does there, sir, that in MCAs case, at least, the bulk of their business is now in the area, either of the sale of television programs or in the packaging of television programs, or in the leasing of their studios for television programs, or for other activities connected with television programs. Is that how you read that?

Mr. Stabile: The figures seem to bear that out. They speak for themselves, Mr. Bryant.

Mr. Bryant: I see.

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